IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No. 3464 of 2005
Date of Decision: May 30, 2007

Amarjit Singh and another ...Petitioners

Versus

Karnail Singh and others ....Respondents

Coram: Hon'ble Mr. Justice Hemant Gupta.

Present: Shri Ashok Singla, Advocate, for the petitioners.

Shri Tribhuwan Singla, Advocate, for respondent No.1.

HEMANT GUPTA, J.

The challenge in the present revision petition is to the order passed by the learned Executing Court on 6.10.2003, whereby the objections filed by the petitioners against the attachment of the property in dispute, were dismissed. The appeal against the said order was also dismissed on 9.5.2005.

The decree holder filed a suit for recovery of the amount of Rs.1,88,806/- on 4.6.1996 against the Judgment Debtor Ranjit Singh. The said suit was decreed in appeal on 20.2.2001. The trial Court had earlier dismissed the suit on 28.9.1998.

The learned trial Court in the aforesaid suit for recovery passed an order of attachment before judgment on 4.6.1996. Defendant Ranjit Singh executed three sale deeds of the land owned by him. The first sale deed was executed on 29.5.1997 in the sum of Rs.82,000/- and another on 10.6.1997 in the sum of Rs.25,000/- in favour of the present petitioners.

Another sale deed was executed in favour of one Gurmel Singh on 11.5.2000 i.e. after the suit was dismissed by the learned trial Court but before the suit was decreed in appeal.

The learned Executing Court dismissed the objections filed by the petitioners on the ground that the sales effected in favour of the petitioners are void as such sales have been effected in the face of attachment orders. However, the objections of Gurmel Singh, co-objector with the present petitioners, were accepted as he has purchased the property after the order of attachment came to an end with the dismissal of the suit in the year 1998 and thus, the sale in his favour cannot be said to be void.

Learned counsel for the petitioners has vehemently argued that the objections to the attachment are required to be adjudicated upon in terms of the Order 21 Rule 58 of the Code of Civil Procedure (for short `CPC'), by the Executing Court and not by a separate suit. Under Sub Rule 4 of Order 21 Rule 58 CPC, such adjudication has the force as if the decision is a decree. Thus, it was contended that such adjudicatory process requires determination of the questions by way of opportunity to the parties to lead evidence as a substitute of the suit and not in a summary manner. The Executing Court has dismissed the objections without framing any issue and thus, without giving any opportunity to the petitioners to lead evidence in support of their objections. Therefore, the orders are not sustainable. The petitioners also placed strong reliance on Sub Rule 3, appended by this Court to Order 21 Rule 54 of the CPC, to contend that in the absence of proof of attachment order given effect to in the revenue record, the order of attachment would remain ineffective as such order was not communicated. The provisions of Order 21 Rule 54 Sub Rule read as under:-

> "The order shall take effect, as against persons claiming under a gratuitous transfer from the judgment-debtor, from the date of the order of attachment, and as against others from the time they had knowledge of the passing of the order of attachment or from the date of the proclamation, whichever is earlier."

Learned counsel for the petitioners has relied upon **M/s Southern Steelmet and Alloys Ltd. v. B.M. Steel, Madras, AIR 1978 Madras 270** and **Canara Bank v. Gurmukh Singh and others, AIR 2000 Delhi 48**, to contend that the objections filed must be heard and disposed of by following a procedure akin to that which obtains the disposal of the suit.

On the other hand, learned counsel for the respondent has relied upon a judgment of this Court reported as **Anokh Singh (Died) and others v. Nachhattar Singh and others, 2006(4) Civil Court Cases 361 (P&H)** and **Kanthilal v. Smt. Padma Maiya and others, 1999(2) Civil Court Cases 602 (Karnataka)**, to contend that issues are not necessarily required to be framed in objections against the order of attachment in terms of Order 21 Rule 58 CPC.

The basis of the arguments raised by the learned counsel for the petitioners is that there is no evidence that the order of attachment before judgment on 4.6.1996 was actually carried out by proclamation at the site or in the revenue record. In the absence of such evidence, it cannot be said that the sale of the property by the Judgment Debtor is void as the petitioners have purchased the property for value and consideration and without notice of the order of attachment. It is contended that in terms of Order 21 Rule 54(3) of the CPC, as amended in Punjab, in case of a gratuitous transfer from the Judgment Debtor, the order of attachment is to

take place from the date of attachment but in any other case from the time the vendee had the knowledge of passing of the order of attachment or from the date of proclamation, whichever is earlier. Thus, it was contended that since there is no evidence of date of proclamation or any evidence of communication of order of attachment to the petitioners, the order of attachment will not have effect qua the interest of the present petitioners as the petitioners are not the gratuitous purchasers but the purchasers for valuable consideration.

The argument that the trial Court should have framed issues while adjudicating the objections filed to the attachment of the property in terms of Order 21 Rule 58 CPC, is misconceived. It is not the case of the petitioners that they had claimed issues or an opportunity to lead evidence before the trial Court. The petitioners were satisfied with the adjudicatory process adopted by the trial Court i.e. to decide the objections on the basis of the pleadings filed by the parties. Having failed to claim an opportunity to lead evidence, it could not be said in the revision for the first time that an opportunity was required to be given to the parties, in support of the objections raised.

The argument that issues are required to be framed has been considered by the learned Single Judge of this Court in **Anokh Singh's case case (supra),** wherein, inter-alia, it was held to the following effect:-

> "7..... Therefore, the Executing Court and, thereafter, the Appellate Court, having considered the effect of the concerned decree dated 18.1.1978, it cannot be said that any prejudice has been caused to the objector-appellant on account of not being granted an effective opportunity to lead his evidence that he may be wanting to lead or that the issues were not framed. Although in normal

> course issues are liable to be framed for the determination of the matters between the parties but where the parties are alive to the dispute between them, the mere fact that issues have not been framed would not vitiate the orders validly passed by the Courts below especially when no prejudice is shown to have been caused to the appellants. The ultimate test is one of prejudice. In case of prejudice, the same would have to be remedied. However, no prejudice of any kind is made out as the contentions of the appellants have been considered by both the Courts below."

In view of the ratio of the aforesaid judgment, it is required to be examined whether the petitioners have suffered any prejudice on account of the orders passed by the Courts below without framing of the issues. The entire case of the petitioners was that they have purchased the property for value and consideration without notice of attachment. Having failed to claim an issue at the appropriate stage, so as to prove their bona-fide in purchase of the property, it is not open to the petitioners to raise an argument in revision for the first time. From the sale deeds executed in favour of the petitioners itself, it has been found that no sale consideration was paid at the time of the execution of the sale. No sale consideration has purportedly passed in the presence of the Sub Registrar. The total sale consideration of all the three sale deeds is less than the amount claimed in the suit. These sale deeds have been rightly taken into consideration by the learned Executing Court to hold that the sale in favour of the petitioners is without consideration.

The provisions of Order 21 Rule 54(3) CPC contemplate that in case of gratuitous transfer from the Judgment Debtor, the attachment will take effect from the date of order of attachment. It is only in the other cases,

the attachment is effected from the date of proclamation or the knowledge of the passing of the order of attachment. Since the sale in favour of the petitioners has been found to be without consideration, it is nothing but a gratuitous transfer and thus, in terms of the provisions of Order 21 Rule 54 (3) of the CPC, it will take effect from the date of the order of attachment itself. Since the sale has been effected after the order of attachment was passed, the said sale has been rightly found to be void.

Consequently, I do not find any patent illegality or irregularity in the findings recorded by the Courts below, which may warrant interference by this Court in exercise of its revisional jurisdiction.

Hence, the present revision petition is dismissed.

May 30, 2007 (HEMANT GUPTA)
ds JUDGE
`